

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** December 10, 2018

**Thru:** Bridget C. Bohac, Chief Clerk  
Toby Baker, Executive Director

**From:** L'Oreal W. Stepney, P.E., Deputy Director  
Office of Water

**From:** Ramiro Garcia, Deputy Director  
Office of Compliance and Enforcement

**Docket No.:** 2017-0766-RUL

**Subject:** Commission Approval for Proposed Rulemaking  
Chapter 342, Regulation of Certain Aggregate Production Operations  
HB 2582: Exemption for Certain Quarries from the Aggregate Production  
Operation Registration Requirements of Texas Water Code, Chapter 28A  
Rule Project No. 2017-026-342-OW

### **Background and reason(s) for the rulemaking:**

House Bill (HB) 2582, 85th Texas Legislature, 2017, amended the Texas Water Code (TWC), §28A.001(1) to add a new exemption to the list of existing exemptions in the definition of "Aggregate production operation" (APO). The exemption applies to a site at which specialty or terrazzo-type stone is removed or extracted from the earth, the material is produced for commercial sale and used exclusively for decorative or artistic uses, and the horizon that is exposed for current production does not exceed five acres.

### **Scope of the rulemaking:**

#### **A.) Summary of what the rulemaking will do:**

The proposed rulemaking would amend 30 Texas Administrative Code (TAC) Chapter 342 to add the new exemption in HB 2582. Additional changes would replace "regulated activity(ies)" with "extraction activity(ies)" throughout the chapter and amend §342.25(e) for consistency with TWC, Chapter 28A. The proposed rulemaking would also add definitions for "Decorative or artistic uses," "Extraction activities," "Specialty stone," and "Terrazzo-type stone" to improve understanding and enforceability.

#### **B.) Scope required by federal regulations or state statutes:**

The proposed rulemaking implements HB 2582.

#### **C.) Additional staff recommendations that are not required by federal rule or state statute:**

Staff recommends defining "Decorative or artistic uses," "Extraction activities," "Specialty stone," and "Terrazzo-type stone" to increase the understanding and enforceability of the chapter. Additionally, staff recommends replacing "regulated activity(ies)" with "extraction activity(ies)" throughout the chapter and amending §342.25(e) for consistency with TWC, Chapter 28A.

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**Statutory authority:**

- TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state;
- TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction;
- TWC, §5.103 and §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013;
- TWC, §5.120, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state; and
- TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the TCEQ in the public interest.

**Effect on the:**

**A.) Regulated community:**

The exemption in HB 2582 is for sites five acres or less in size. TCEQ has identified 82 APOs currently registered at five acres or less. The exemption applies to a specific type of specialty or terrazzo-type stone and TCEQ data systems do not capture that type of specific information. Sites that meet the exemption criteria will no longer be required to register as an APO or pay the registration fee, but will still be subject to other air, water, and waste regulations and permitting.

**B.) Public:**

The proposed rulemaking is not expected to have an effect on the public.

**C.) Agency programs:**

The proposed rules would reduce the number of registration applications received for APOs that meet this new exemption. Registration applications and fees are required to be submitted annually. Registration fees are based on the number of acres disturbed. The registration fee for sites less than 10 acres is \$300 if the registration is submitted on paper, or \$225 if the registration is submitted online.

**Stakeholder meetings:**

The status of this rulemaking will be discussed at the quarterly Water Quality Advisory Workgroup meetings, and a public hearing will be scheduled during the rulemaking public comment period.

**Potential controversial concerns and legislative interest:**

None.

**Will this rulemaking affect any current policies or require development of new policies?**

No.

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**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

This rulemaking implements HB 2582 amendments to the statute and any alternative course of action would result in a conflict between the statute and rule. However, the scope of the rulemaking can be revised to remove the staff recommended changes.

**Key points in the proposal rulemaking schedule:**

**Anticipated proposal date:** December 12, 2018

**Anticipated *Texas Register* publication date:** December 28, 2018

**Anticipated public hearing date (if any):** January 22, 2019

**Anticipated public comment period:** December 28, 2018 - January 30, 2019

**Anticipated adoption date:** May 22, 2019

**Agency contacts:**

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**Attachments:**

HB 2582

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Jim Rizk  
Martha Landwehr  
Office of General Counsel  
Laurie Fleet  
Kris Hogan